

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

UNITED STATES OF AMERICA)	
)	Case No. 1:20-cr-82
v.)	
)	Hon. Liam O’Grady
JOHN WILLIAM KIRBY KELLEY,)	
)	
Defendant.)	Sentencing: March 15, 2021

**DEFENDANT’S MOTION FOR LEAVE TO FILE ADDITIONAL EXHIBIT TO
DEFENSE POSITION ON SENTENCING UNDER SEAL AND
INCORPORATED MEMORANDUM IN SUPPORT**

Pursuant to Local Criminal Rule 49(E), defendant, John William Kirby Kelley, through counsel, moves for an order permitting the defense to file under seal an additional exhibit, Exhibit 5, to the Defense Position on Sentencing. A proposed order is attached for the consideration of the Court.¹

In support of this motion, the defense further states:

1. Mr. Kelley asks the Court to seal the additional exhibit, Exhibit 5, to his Position on Sentencing, which is a letter from a social worker who is employed at the Alexandria Adult Detention Center and has had regular contact with Mr. Kelley during his 14 months of incarceration. The defense believes sealing is necessary because of the nature of the therapeutic relationship and reference to Mr. Kelley’s mental health.

¹ The document to be filed under seal will be filed with the Court non-electronically pursuant to Local Criminal Rule 49(E) and the Electronic Case Filing Policies and Procedures (*see* p. 21). Pursuant to the Local Rules, the sealed document is to be treated as sealed pending the outcome of this motion.

2. The Court has the inherent power to seal materials submitted to it. *See United States v. Wuagneux*, 683 F.2d 1343, 1351 (11th Cir. 1982); *State of Arizona v. Maypenny*, 672 F.2d 761, 765 (9th Cir. 1982); *Times Mirror Company v. United States*, 873 F.2d 1210 (9th Cir. 1989); *see also Shea v. Gabriel*, 520 F.2d 879 (1st Cir. 1975); *United States v. Hubbard*, 650 F.2d 293 (D.C. Cir. 1980); *In re Braughton*, 520 F.2d 765, 766 (9th Cir. 1975). “The trial court has supervisory power over its own records and may, in its discretion, seal documents if the public’s right of access is outweighed by competing interests.” *In re Knight Pub. Co.*, 743 F.2d 231, 235 (4th Cir. 1984).

3. The material to be filed under seal would need to remain sealed permanently.

Accordingly, Mr. Kelley respectfully requests that this Court enter an order allowing the defense to file Exhibit 5 under seal.

Respectfully submitted,

JOHN WILLIAM KIRBY KELLEY

By counsel,
Jeremy C. Kamens
Federal Public Defender

By: /s/ Cadence Mertz
Cadence Mertz
Va. Bar No. 89750
Nathaniel Wenstrup
Admitted *pro hac vice*
Assistant Federal Public Defenders
Office of the Federal Public Defender
1650 King Street, Suite 500
Alexandria, Virginia 22314

703-600-0840
703-600-0880 (fax)
cadence_mertz@fd.org

CERTIFICATE OF SERVICE

I hereby certify that on March 10, 2021, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to counsel of record.

/s/ Cadence Mertz
Cadence Mertz
Va. Bar No. 89750
Assistant Federal Public Defender
Office of the Federal Public Defender
1650 King Street, Suite 500
Alexandria, Virginia 22314
703-600-0840
703-600-0880 (fax)
cadence_mertz@fd.org